

**EXHIBIT 2**

CORRESPONDENCE REGARDING LEASED ACCESS APPLICATION

**From:** Leased Access Response  
**To:** Charlie Stogner  
**Cc:** Leased Access Response  
**Subject:** RE: Leased access info Las Vegas  
**Date:** Thursday, March 23, 2017 12:54:26 PM

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Mr. Stogner,

Per your request, below is the information for part time rates and channel number in the Las Vegas system.

**Channel:** 189

Time Period	Cable TV Service	Independent View	NLA Cost Channel
6:00 AM - 9:00 AM	\$343.95	\$287.92	\$1,263.48
9:00 AM - 4:00 PM	\$129.34	\$108.27	\$475.12
4:00 PM - 8:00 PM	\$297.90	\$249.37	\$1,094.34
8:00 PM - 11:00 PM	\$623.54	\$521.97	\$2,290.57
11:00 PM - 1:00 AM	\$519.25	\$434.66	\$1,907.45
1:00 AM - 6:00 AM	\$123.82	\$103.65	\$454.85

On Tue, Mar 28, 2017 at 8:29 AM, Leased Access Response  
<[LeasedAccessResponse@cox.com](mailto:LeasedAccessResponse@cox.com)> wrote:

Mr. Stogner,

Thank you for providing the Leased Access Application from your files as well as the additional inquiries you provided upon receiving Cox's hourly lease rates for part-time leased access on our Las Vegas, Nevada cable system.

Section 76.970(i)(3) of the FCC's rules provides that bona fide requests for leased access information must include: the desired contract term length; the time slot desired; the anticipated commencement date for carriage; and the nature of the programming. Once this information is submitted, but not before, cable operators like Cox must provide the information listed in Section 76.970(i)(1).

Cox's Leased Access Application requests the information required by Section 76.970(i)(3) as well as information required for Cox to make an initial determination regarding, e.g., appropriate security deposits, insurance requirements, and technical support that may be required to carry the leased access programming. In addition to the specific requirements of Section 76.970(i)(3), the FCC has long held that this information includes, among other things, "the likelihood that the nature of the leased access programming will pose a liability risk for the operator, previous instances of litigation arising from the leased access programming, and any other relevant factors." Leased Commercial Access, Second Report And Order And Second Order On Reconsideration Of The First Report And Order, 12 FCC Rcd 5267, 5323 at para. 112 (1997); see also *Gianotti v. Cablevision*, 11 FCC Rcd 10441 (Cab. Serv. Bur. 1996). You also may recall that information regarding how the leased access programming will be delivered is relevant to the technical support that may be needed to distribute the programming and the cost of that support. See *StogMedia d/b/a Stog TV v. CableOne, Inc.*, 24 FCC Rcd 2947 (Med. Bur. 2009).

The StogMedia Leased Access Application fails to provide the information required by Section 76.970(i)(3) or any of the other information Cox will need to make a determination regarding carriage of StogMedia's programming. For example, StogMedia failed to provide such information in response to Sections B1, B5, B7, B8, B9, B10, B13, C, E1, E3, Exhibit B1, and Exhibit C of the Application. The StogMedia Leased Access Application you provided to Cox on or about March 13, 2017 therefore is not a bona fide request for leased access information and does not obligate Cox to provide the information listed in Section 76.970(i)(1) of the FCC's rules.

Nevertheless, as you know, Cox previously provided StogMedia with a leased access rate card for the Las Vegas, Nevada cable system serving Las Vegas, N. Las Vegas, Henderson, Boulder City, and Clark

County. See King Kong Broadcasting v. Cox Communications Las Vegas, Inc. d/b/a Cox, 28 FCC Rcd 15618 (Med. Bur. 2013). Regarding your inquiries on March 23 regarding Cox's Las Vegas system local origination channel, those inquiries are irrelevant to leased access, and nothing in the FCC's rules requires Cox to respond to them.

Thank you for your interest in commercial leased access on Cox's Las Vegas cable system. If you would like to discuss carriage further, please provide the information requested in Cox's Leased Access Application.

**From:** Charlie Stogner [mailto:stogtv@gmail.com]  
**Sent:** Wednesday, March 29, 2017 9:15 AM  
**To:** Leased Access Response <LeasedAccessResponse@cox.com>  
**Subject:** Re: Las Vegas rates

Although you wrote; "Nevertheless, as you know, Cox previously provided StogMedia with a leased access rate card for the Las Vegas, Nevada cable system serving Las Vegas, N. Las Vegas, Henderson, Boulder City, and Clark County". , I find the 'tenor' of your correspondence has it appear you're not exactly eager to live up to the 'spirit' of the law; to provide that 'genuine outlet' prescribed by Congress when enacting the law.

You may want to first consider the absurdity of the 'bona fide' rule at Section 76.970(i)(3). It appears this applies to 'small system' operators which I doubt Cox qualifies as. However let's see if this will satisfy. The provisions of the small system 'bona fide' call for the applicant to determine such things as time slot, etc. without first having the knowledge necessary to make such a determination.

StogMedia has been exercising the right to leased access with cable sites since 1997 and has always made it a practice to establish one year agreements, provide the requisite insurance to then enable us to secure carriage for whatever times desired (time slot available of course) anytime during the year. But in this case, let's technically satisfy the 'bona fide' request by noting we want the agreement (not contract) for one year. We're not yet ready to begin use of a channel since we first needed rates and other info to determine what fit our needs. However, to satisfy the 'bona fide' request at (i)(3). Time Slot: We will begin with requesting 1:00 to 1:30am, Wednesdays.

Anticipated date to commence: June 21, 2017.

Nature of Programming: **47 U.S.C. § 612 (b) (5) Video programming is defined as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station." 47 U.S.C. § 602 (20).**

"3"; "All other programming".

Or, this with our category being Categories/types of

Programming

76.970, 47 CFR

Ch. 1 (10-1-94 edition)

Item

(f)...there are three program categories.

1.

Programming for which a per-event or per channel charge is made;

2.

Programming more than fifty percent of the capacity of which is used to sell products directly to consumers;

and

**3. All other**

**programming.**

Now let's address some more points in your correspondence.

Obviously with years of experience with airtime (carriage on Comcast, Time Warner, Charter, Bright House, Mediacom and many more, literally coast to coast, border to border, we do and have met what you cite. Since StogMedia is a nationwide user of leased access programming, the only known multi-site national operator, and I also have served as president of the national association of leased access programmers since 2003, I'm well aware of FCC's position on permitting cable operators to require proof of 'media perils' coverage and the issue of technical

support you cite, StogMedia d/b/a Stog TV v. CableOne, Inc., 24 FCC Rcd 2947 (Med. Bur. 2009) is a sad joke. One thing, FCC addressed 'delivery' of signals when in our petition we made no mention of having the cable operator 'deliver' our signal. The issue was 'receiving' signals.

In their order (it took them about a year to rule on this) FCC stated: **Cable One further states that there are no other programmers on the Biloxi or Long Beach systems that use the Internet to transport their programming to these headends, and StogMedia concedes as much. StogMedia did not concede** since in fact we never knew Cable One was claiming we were the only users. The order continues: **Because Cable One does not provide free broadband capacity to any leased access or non-leased access programmer for the delivery of video programming to its headends, it is entitled to charge StogMedia for the reasonable costs of such services, as permitted by Section 76.971(c) of our rules.**

**Cable One concealed the fact they were indeed using broadband to deliver programming content to their own local community channel (see: [http://www.keywesttechnology.com/wp-content/uploads/2016/03/Case-Study\\_Cable-ONE.pdf](http://www.keywesttechnology.com/wp-content/uploads/2016/03/Case-Study_Cable-ONE.pdf))** In this article a Cable One employee is quoted as saying, ***"Through the MediaXtreme editor, I schedule ads, set them up and send them to the three headends."*** It seems pretty obvious Cable One lied to FCC in their answer to our petition and FCC took their word. What she described is the same as what StogMedia does.

So, let's move on to where you write: StogMedia failed to provide such information in response to Sections B1, B5, B7, B8, B9, B10, B13, C, E1, E3, Exhibit B1, and Exhibit C of the Application.

B1: Please see the programming description mentioned earlier.

B5: Note our comment on the application. Then refer to where earlier in this correspondence we wrote: ). Time Slot: We will begin with requesting 1:99 to 1:30am,

Wednesday.

Anticipat

ed date to commence: June 21,  
2017.

B7: See

above.

B8:

For purposes of providing a reply, 'differing days'.

B9: Answered in B5,

Wednesday

B10: If you will refer

to the submitted application you will see this was answered. However, does this not cross the line of Cox trying to impose 'conditions and/or terms' on leased access? B13: Again refer to the submitted application. If Cox has evidence FCC permits them asking this line of questioning, please provide evidence of it.

C; Again, if you

feel your permitted to require this information, please provide evidence. E1: This was answered. You have not provided us information on how you receive content from other programmers.

E3: Aga

in, check the submitted application and I believe you will find this was answered.

Exhibit B1 of the submitted application does provide this info.

Exhibit C: Again, refer to our comments on the submitted application.

Interesting you mention King Kong where in the petition Cox cites "Roberts vs Time Warner". But you left off where FCC wrote: The FCC states that cable operators may be required to accommodate area-specific leased access if the following conditions appear:

1. The necessary technology is in place and is operational throughout the entire cable system.
2. There are no significant technological or economic barriers.
3. Leased access opportunities could be lost through clustering or consolidation of local systems.

It has been pointed out By Time Warner's own admission on their website, the technology exists, is operational, and apparently profitable

You write that inquiries regarding any local origination channel (ch. 48?) are irrelevant to leased access but I must differ. Local ad insert and bulk airtime (long form) sales by cable operators are the most severe competition to local leased access for local advertising dollars. Cable operator's media sales offer them extreme 'market power' over leased access programmers, something that Congress admonished FCC to not permit.

The rates Cox provided will suffice for us to determine the feasibility of us using leased access airtime at Las Vegas. However in that Cox Communications grew out of Cox newspapers, it is dismaying corporate officers don't approach their cable communities with the same zeal and community minded spirit as I'm sure was that of 28 year old James M. Cox when he founded Cox Enterprises by buying the Dayton (Oh.) Evening News.

Having spent over 55 years as a journalist, spanning from cub reporter to editor/publisher of several weekly papers, combined with ownership and management experience in other businesses I feel I would be remiss should I not at least make an effort to have a cable operator, birthed from a newspaper background, take a serious look at changing the way they treat leased access and instead of going to extremes to discourage or make it difficult to secure carriage on their systems, adopt an attitude of embracing local programming and cooperating in having it truly the 'genuine outlet' desired by Congress. A major cable operator once described local programming as 'customer retention, line extension'.

If my information is still insufficient to satisfy your demands for executing a formal leased access agreement for us at Las Vegas, please respond with whatever additional demands or conditions you want to impose.

Respectfully,

Charles Stogner,

StogMedia

**From:** Leased Access Response  
**Sent:** Thursday, April 6, 2017 10:20 AM  
**To:** Charlie Stogner ([stogtv@gmail.com](mailto:stogtv@gmail.com)) <[stogtv@gmail.com](mailto:stogtv@gmail.com)>  
**Cc:** Leased Access Response <[LeasedAccessResponse@cox.com](mailto:LeasedAccessResponse@cox.com)>  
**Subject:** RE: Las Vegas rates

Mr. Stogner,

Thank you for your March 29 e-mail message regarding commercial leased access on Cox's cable system serving the Las Vegas, Nevada market area. Cox will be happy to move forward as soon as StogMedia provides Cox with a completed Leased Access Application containing all the information requested in the Application, as discussed in our previous correspondence. StogMedia has yet to provide all the required information. For your convenience, therefore, attached is a Leased Access Application for carriage on the Cox Las Vegas cable system.

Despite the deficiencies in the StogMedia's initial Leased Access Application and your March 29 message, however, attached is the information referenced in Section 76.970(i)(1) of the FCC's rules, including available leased access set-aside capacity in the Las Vegas system, a complete schedule of full-time and part-time leased access rates, and rates associated with technical and studio costs. For the Las Vegas market, Studio costs are \$100 per hour; Technical fees are \$125 per man hour. These fees are subject to change. Currently, 100% of our leased access capacity is available. In an email sent on March 23rd, we mistakenly listed our leased access channel as 189. It is actually channel 48.

Your message states that Section 76.970(i)(3) of the FCC's rules, which sets forth the required contents of a bona fide leased access request, is an "absurdity" that "appears . . . [to apply only] to 'small system' operators." StogMedia's characterization of the rule notwithstanding, Cox believes your statement that the rule applies exclusively to small system operators is incorrect. First, subsections 76.970(i)(2), which allows small systems an additional fifteen (15) days to respond to leased access requests, and 76.970(i)(3), which specifies the contents of such requests, "as used in this section [i.e., 76.970]," are independent subsections of 76.970. Second, the FCC's precedents clarify that the rule applies regardless of system size. See, e.g., *Stephen S. Smith v. TCI Cablevision of Texas, Inc.*, 13 FCC Rcd 3121, 3124 at para. 8 (Cab. Serv. Bur. 1998) (applying the rule to then largest cable television operator in the country, and stating that the rule "sets forth in detail four information requirements that a bona fide written leased access request must contain") (footnote omitted); see also *Chauncey v. Continental Cablevision*, 11 FCC Rcd 1029, 1034 at para. 11 (Cab. Serv. Bur. 1995). In any event, this is a moot point because Cox has provided the information referenced in Section 76.970(i)(1) of the FCC's rules.

Section B1 and Exhibit B of Cox's Leased Access Application request "a general description of the proposed programming, including but not limited to format, genre(s), theme or content, including whether the video programming will be a program length commercial." Neither StogMedia's Leased Access Application, which refers to outdated 1994 FCC rules regarding leased access rate categories, nor your March 29 message, which refers to the statutory definition of video programming, responds to this legitimate request. As our previous correspondence demonstrated, the FCC has long held that cable operators have the right to such information regarding the content of proposed leased access programming for the purpose of ascertaining, among other things, "the likelihood that the nature of the leased access programming will pose a liability risk for the operator, previous instances of litigation arising from the leased access programming, and any other relevant factors." Leased Commercial Access, Second Report And Order And Second Order On Reconsideration Of The First Report And Order,



12 FCC Rcd 5267, 5323 at para. 112 (1997) (emphasis added) ("Second Leased Access Report"). The FCC, moreover, typically considers this "nature of the programming" factor in leased access cases. See, e.g., *Church of New Bedford v. MediaOne*, 14 FCC Rcd 2863 (Cab. Serv. Bur. 1999) (religious programming); *Campbell v. Time Warner Cable* 13 FCC Rcd 16702 (Cab. Serv. Bur. 1998) (unrehearsed and ad hoc nature of programming). Therefore, please ensure your revised Leased Access Application provides a meaningful and accurate description of the "nature of the programming" that StogMedia intends to present, as required by Section 76.970(i)(3)(iv) of the FCC's rules.

Please provide factual responses in your revised Leased Access Application. Contrary to the claims in your March 29 message, StogMedia has failed to provide the information requested regarding copyrights, permits, licenses, and clearances (Section B10); channel license or lease agreements or negotiations (Section B13); legal qualifications to do business in the state of Nevada (Section C and Exhibit C); method of video programming delivery (Section E1); and technical assistance (Section E3). As demonstrated in our previous correspondence and the FCC's Second Leased Access Report — which specifically authorizes Cox to seek information regarding and to investigate "previous instances of litigation arising from the leased access programming, and any other relevant factors" impacting the proposed carriage of the leased access programming, 12 FCC Rcd at 5323 — all the information Cox requested is necessary to make an initial determination concerning, e.g., appropriate security deposits, insurance requirements, and technical support. See also *StogMedia d/b/a Stog TV v. CableOne, Inc.*, 24 FCC Rcd 2947 (Med. Bur. 2009) (method of delivery and technical assistance).

Your March 29 message disagrees with Cox that inquiries regarding Cox's local origination channel, which is wholly within Cox's editorial control, are irrelevant to requests for leased access, over which Cox exercises no editorial control. We are not aware of any provision of any law, rule, or regulation that requires Cox to disclose such information to leased access applicants.

Thank you for your continued interest in commercial leased access on Cox's Las Vegas area cable system. To move forward, please complete the attached Leased Access Application.

**A. GENERAL INFORMATION**

**Applicant Name:** StogMedia

**Date:** May 19, 2017

**Trade or Business Name:** *(If different)* \_\_\_\_\_

**Contact Person:** Charles Stogner **Telephone:** 601-914-6672

**Email Address:** stogtv@gmail.com

**Mailing Address:** 5146 Beauregard Rd., Wesson, Ms. 39191

**1. Status of applicant (check one)**

☒ **Sole Proprietor** ☐ Limited Liability Company ☐ Corporation ☐ Partnership | *Limited:* ☐ Yes ☐ No

**2. Principal business of applicant:** television programming

**B. PROPOSED USE OF CHANNEL**

**1.** Only video programming will be accepted. On an attached sheet of paper, provide a general description of **the** proposed programming, including but not limited to, format, genre(s), theme or content, including whether the video programming will be a program length commercial. *(On the attached Exhibit B-1)*

**2.** Do you anticipate that any of the video programming will be aired live? ☐ Yes ☒ No

**3.** Is any of the proposed programming indecent or obscene? ☐ Yes ☒ No

**4.** Will there be any commercial use of the channel, i.e., sale of advertising, fund raising, etc.? ☐ Yes ☒ No

If so, please describe generally: Same as generally in local and network broadcast network programming, primarily local, competes with Cox Media ad inserts.

**5.** What are the proposed commencement and termination dates for cable channel use? **Begin mid-June, 2017 for a one year term.**

**6.** Do you desire: ☐ full or ☒ **part-time** use of a channel **But may expand to full time**

**7.** What days each week do you intend to air your programming? ☐ Mon ☐ Tues ☐ Wed ☐ Thurs ☐ Fri ☐ Sat ☐ Sun **We plan to air one hour daily, seven days a week and will select the day before June 1, dependent of the availability of time slots.**

**8.** On a weekly basis, do you wish to air programming on ☐ differing days or ☐ recurring days? Please explain: **each day, seven days a week.**

**9.** For what time periods each day do you wish to air programming? If the time periods differ by day of the week, detail separately for each day (For example, Mon 8pm – 10pm, Wed 2pm – 4pm, and Fri 10am – 12pm.) **one hour daily, seven days a week and will select the day before June 1, dependent of the availability of time slots.**

10. List and provide all copyrights, permits, licenses, and clearances necessary for the proposed service and identify those already obtained. (Attach separate sheet if necessary.)

*We fail to find anywhere in the law and/or FCC regulations, rules, orders or directives where we're required to provide this information to a cable operator, who is 'held harmless' from our content but the law. If Cox has evidence where FCC has agreed you have a right to this information*

11.

List any prior Cox systems with which Applicant has sought or obtained leased commercial access. (Include dates.)

**Don't recall dates but there have been a few times over the past 15 years that requested leased access rates/info from various sites. None ever worked out at the time.**

12. Describe any previous experience in cable television operation and/or signal transmission services.

**Been actively engaged in cable programming and operations since 1996.**

13. List any other channel license or lease agreements to which applicant was or is currently a party or is currently negotiating.

Include in the list the name, address, telephone number and email address of an individual who can verify this information.

**I fail to find anywhere in the law, FCC regulations, rules, orders or published directives that says a cable operator has a right to this proprietary information. StogMedia leases airtime on a large number of cable sites, nationwide but this is not information FCC rules require we provide. Actually this varies from month to month. StogMedia leases airtime on a large number of cable sites, nationwide but this is not information FCC rules require we provide. Actually this varies from month to month.**

### C. LEGAL QUALIFICATIONS

If applicant is a corporation, partnership, limited liability company or other business entity, attach evidence of authority to do business in the state in which the cable system is located.

☐ Attached as Exhibit C ☒ Not attached because **Fail to find anywhere this is required of airing on leased access. What about 'infomercials' Cox, Las Vegas, may air on a channel? Do they have to meet this requirement or can you provide me evidence of where you find justification for this?**

### D. FINANCIAL QUALIFICATIONS

1. Attach a current, certified balance sheet and profit and loss statement including applicant's last fiscal year or other evidence satisfactory to demonstrate applicant's ability to meet the financial obligations in connection with the licensing of a channel.

If applicant is a publicly held company, attach copies of its latest annual report and 10-k filing with the SEC.

☐ Attached as Exhibit D-1 ☒ Not attached because **We are not seeking any 'extension of credit' and prepay all airtime by the month.**

2. List all sources of financing for applicant's proposed cable channel operations.

**Our shows are self-funded.**

3. Has applicant, or any partnership, company or concern with which applicant is affiliated, whether by direct or indirect ownership or parent or subsidiary relationship, ever been a debtor or bankrupt in a proceeding under the bankruptcy act, placed in receivership, or become insolvent?

☐ Yes ☒ No

If yes, please provide details:

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4. List, where applicable, the following (attached as Exhibit D-4): *(Include names and addresses.)*

- Corporation – all stockholders owning five percent (%5) or more of corporation voting stock, and all officers and directors.
- Partnership – all general partners.
- Limited liability company – all officers and members.
- For all of the above, provide the name and address of at least three credit references, one of which must be applicant's principal bank.

***Please be advised we prepay all leased access airtime, as prescribed by the cable operator leased access agreements. You are instructed to make NO inquiry into our credit that will cause it to be recorded.***

#### **E. TECHNICAL QUALIFICATIONS**

1. How will the video programming be delivered to the cable system for distribution?

☐ Tape ☐ DVD ☐ Broadband ☐ IP Over Broadband ☐ Microwave ☐ Satellite

**Dependent on how the headend receives programming (content/signals) from other programmers, especially non-leased programmers.**

2. If microwave is to be used in the proposed operations, attach a complete description of such microwave proposal, including expected costs, location of sites, and other details.

3. Does applicant anticipate the need for any technical assistance from Cox in order to deliver its video programming? **None other than what FCC says regarding same type technical assistance.**

If yes, list assistance requested: \_\_\_\_\_

By signing this application, I hereby certify that I am an authorized representative of StogMedia and have full power to submit this Application and to disclose the information contained herein and to consent to an investigative report, including information concerning character, general reputation and credit worthiness. **Please note previous mention of not effecting our credit.**

**Charles Stogner**

Printed Signed



Title

**Exhibit B**

**B1**

Provide a general description of the proposed programming, including but not limited to, format, genre(s), theme or content. *Although this appears close to an attempt to exert some form of editorial control, something forbidden by the law, here's ours.*

Categories/types of Programming

76.970, 47 CFR Ch. 1 (10-1-94 edition)

Item (f)...there are three program categories.

Programming for which a per-event or per channel charge is made;

Programming more than fifty percent of the capacity of which is used to sell products directly to consumers; and

All other programming.

**Programming falls in the FCC category of 'other' refer to FCC**

Will the video programming be a program length commercial? ☐ Yes ☐ No

PERHAPS, possible there may be from time to time shows that would be considered 'infomercials', same as those carried on many cable networks and/or perhaps by Cox on a local origination channel.

**Exhibit C**

Attach evidence of authority to do business in the state(s) in which the cable system(s) is located.

**Fail to find anywhere this is required of airing on leased access. What about 'infomercials' Cox, Las Vegas, may air on a channel? Do they have to meet this requirement or can you provide me evidence of where you find justification for this?**

**Exhibit D**

**D1**

Attach a current, certified balance sheet and profit and loss statement including applicant's last fiscal year or other evidence satisfactory to demonstrate applicant's ability to meet the financial obligations in connection with the licensing of a channel. If applicant is a publicly held company, attach copies of its latest annual report and 10-k filing with the SEC.

**Not applicable in that we ARE NOT applying for any extension of credit but will prepay.**

**Exhibit D**

**D4**

**Not Applicable**

☐ Corporation – all stockholders owning five percent (5%) or more of corporation voting stock, and all officers and directors.

☐ Partnership – all general partners.

☐ Limited liability company – all officers and members.

**Name Title (If officer) Address**

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*Provide the name and address of at least three credit references, one of which must be applicant's principal bank.*

**Name of Bank Contact Address Phone**

**Not applicable in that we ARE NOT applying for any extension of credit but will prepay.**  
**Please list at least two more references below.**

**Name Address Phone**

**Not applicable in that we ARE NOT applying for any extension of credit but will prepay.**

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On Tue, May 23, 2017 at 12:16 PM, Philpott, Joiava (CCI-Atlanta-LD)  
<[Joiava.Philpott@cox.com](mailto:Joiava.Philpott@cox.com)> wrote:

Dear Mr. Stogner,

I am responding on behalf of Jennifer Hightower regarding the email that you sent to her last Friday. I shared with Jennifer that before I joined Cox Communications, I use to oversee leased access work at Charter Communications many years ago and that I was familiar with you and the significant work that you do in the leased access space. I am presently working with the team here at Cox to better understand what has transpired with you and I will follow up with you within the next couple of days.

Thank you,

Joiava Philpott

VP, Regulatory Affairs

Law & Policy Department

Cox Communications, Inc.

6205-B Peachtree Dunwoody Rd.

Atlanta, GA 30328

404-269-0983 tel

404 269-0539 fax

[Joiava.philpott@cox.com](mailto:Joiava.philpott@cox.com)

**From:** Leased Access Response <LeasedAccessResponse@cox.com>  
**Sent:** Friday, June 02, 2017 1:00 PM  
**To:** Charlie Stogner  
**Cc:** Leased Access Response  
**Subject:** RE: Amend application

Dear Mr. Stogner:

Thank you for your recent messages (dated May 22, May 23, May 24, and May 25, 2017) to Ms. Jennifer Hightower, Cox's Senior Vice President of Law and Policy, Ms. Joiava Philpott, Cox's Vice President of Regulatory Affairs, and Mr. Derrick Hanson, Cox's Director of Regulatory Affairs.

Based on your correspondence, Cox believes StogMedia may misunderstand the purpose of certain information Cox requests in its Leased Access Application. Cox therefore reiterates that the information requested in its Leased Access Application that StogMedia has refused to provide — including information regarding the nature of the programming, copyright *etc.* licenses, existing channel lease agreements, financial qualifications, method of programming delivery, *etc.* — is solicited for one and only one reason. Namely, to ascertain the liability and litigation risk to which Cox will be exposed by carriage of leased access programming over which Cox has no editorial control by law. The level of risk in turn determines the scope and extent of reasonable contractual protections that will be necessary to mitigate those risks, such as, *e.g.*, insurance, security deposits, and surety bonds. As an individual with extensive experience in the entertainment industry, you surely are aware that both leased access and non-leased access video programmers routinely provide such information to cable operators and other video programming distributors in one form or another under nearly all program carriage agreements.

Cox appreciates that after almost three months and multiple Cox requests, StogMedia has finally now provided Cox with three of the four items required for *bona fide* leased access requests under Section 76.970(i)(3) of the FCC's rules. *See* 47 C.F.R. § 76.970(i)(3). StogMedia, however, continues to withhold information regarding "[t]he nature of the programming" it wishes Cox to carry on its Las Vegas, Nevada area cable television system, which is specifically required by Section 76.970(i)(3)(iv) of the rules. 47 C.F.R. § 76.970(i)(3)(iv); *see also* *Stephen S. Smith v. TCI Cablevision of Texas, Inc.*, 13 FCC Rcd 3121, 3124 at para. 8 (Cab. Serv. Bur. 1998) (stating that the rule "sets forth in detail four information requirements that a bona fide written leased access request must contain") (footnote omitted); *see also* *Chauncey v. Continental Cablevision*, 11 FCC Rcd 1029, 1034 at para. 11 (Cab. Serv. Bur. 1995).

As you requested, Cox specifically acknowledges receipt of your May 22 message seeking a one-year leased access agreement for daily carriage of unspecified StogMedia programming during the one-hour period from 1:00 a.m. to 2:00 a.m. We also acknowledge receipt of StogMedia's revised, but still incomplete, leased access application, dated May 19, 2017, and StogMedia's stated desire to commence carriage on June 15, 2017. As you know, despite having yet to receive a *bona fide* leased access request from StogMedia, Cox previously provided StogMedia with all the information specified in Section 76.970(i)(1) of the FCC's rules. *See* 47 C.F.R. § 76.970(i)(1). That information included the available leased access set-aside capacity in Cox's Las Vegas system, a complete schedule of full-time and part-time leased access rates, a schedule of rates associated with technical and studio costs, and — although StogMedia did not request it and Cox was under no obligation to provide it — a sample leased access contract.

StogMedia's revised leased access application, dated May 19, again fails to provide all the information required by Section 76.970(i)(3) or any of the other information Cox will need to ascertain the risks of carrying



StogMedia's programming, as discussed in detail below and in Cox's previous correspondence. Nevertheless, in the interest of moving forward with StogMedia's request and using the information StogMedia has provided to date, Cox plans to begin preparing a specific Leased Access Agreement between StogMedia and Cox Communications Las Vegas, Inc. d/b/a Cox.

Based on Cox's current leased access rate card for the Las Vegas system and StogMedia's apparent desire for daily carriage from 1:00 a.m. to 2:00 a.m. on Cox's TV Starter package (Channel 48), the annual leased access fee will be \$45,194.30 (*i.e.*, \$3,766.19 monthly). Annual rates for other time periods are easily determined by reference to the rate card Cox previously provided to StogMedia. The leased access fee is in addition to any insurance requirements, security deposits, surety bonds, technical, transport fees, or other requirements that may be necessary to protect Cox. Cox cannot now determine the precise scope and extent of those additional requirements and fees because StogMedia continues to refuse to provide any information that would enable Cox to assess the liability risks posed by carriage of StogMedia's proposed programming (whatever it is).

For example, StogMedia to date has refused Cox's legitimate and reasonable requests to provide:

1. a description of the nature of the programming StogMedia proposes to transmit on Cox's cable system;
2. evidence that StogMedia has obtained the copyrights, permits, licenses, and clearances necessary to publicly perform its programming, including copyrighted works, such as music, incorporated in its programming;
3. information regarding other channel license or lease agreements to which StogMedia is or may be a party;
4. evidence of StogMedia's authority to do business in the state of Nevada;
5. evidence of StogMedia's financial qualifications; or
6. an indication of how StogMedia will deliver its video programming to the cable system or whether and what technical assistance it may require.

In response to the inquiry in your May 24 message to Ms. Philpott, and as Cox has now repeatedly explained to StogMedia, this information is necessary for Cox to evaluate the risks of carriage and to determine reasonable insurance, security and other contractual protections, as well as technical fees. Without such information, the potential risks to Cox increase exponentially and, in Cox's view, to unacceptable levels. Cox also previously has explained in detail to StogMedia the FCC's rules, orders, and adjudicatory decisions that support Cox's request for this information.

To briefly reiterate, however, the FCC has long held that in addition to the specific requirements of Section 76.970(i)(3), which StogMedia has yet to satisfy, cable operators have the right to ascertain, among other things, "*the likelihood that the nature of the leased access programming will pose a liability risk for the operator, previous instances of litigation arising from the leased access programming, and any other relevant factors.*" Leased Commercial Access, *Second Report And Order And Second Order On Reconsideration Of The First Report And Order*, 12 FCC Rcd 5267, 5323 at para. 112 (1997) (emphasis added); *see also Gianotti v. Cablevision*, 11 FCC Rcd 10441 (Cab. Serv. Bur. 1996). The FCC, moreover, typically considers this "nature of the programming" factor in leased access cases. *See, e.g., Church of New Bedford v. MediaOne*, 14 FCC Rcd 2863 (Cab. Serv. Bur. 1999) (religious programming); *Campbell v. Time Warner Cable* 13 FCC Rcd 16702 (Cab. Serv. Bur. 1998) (unrehearsed and ad hoc nature of programming).

Contrary to reflecting any "attempt to exert some form of editorial control" as StogMedia's Leased Access Application implies, Cox's legitimate inquiries regarding the nature of StogMedia's programming, StogMedia's rights to that programming, StogMedia's other channel lease agreements, StogMedia's authority to do business in Nevada, and StogMedia's financial qualifications all are directed to ascertaining Cox's liability risks in carrying StogMedia's programming and establishing appropriate and reasonable insurance, security, and

other contractual protections. *See, e.g., R.K. Prod. Co. v. Adelphia Cable Communications*, 13 FCC Rcd 1559, para. 14 (Cab. Serv. Bur. 1997) (information from leased access programmer necessary for cable operator determination of costs). In addition, information regarding how StogMedia will deliver its programming to the cable system is relevant to protections Cox may need to prevent the introduction of computer viruses or other malicious computer code, the level of technical assistance StogMedia may require, and the cost of that assistance. *See, e.g., StogMedia d/b/a Stog TV v. CableOne, Inc.*, 24 FCC Rcd 2947 (Med. Bur. 2009) (method of delivery and technical assistance); *Engle Broadcasting v. Comcast*, 16 FCC Rcd 17650, at para. 7 (Cab. Serv. Bur. 2001) (no cable system responsibility to assist in delivering programming from a programmer's studio or production facility to the headend or input point of the system). As a practical matter, StogMedia will need to address these issues before a Leased Access Agreement with Cox can be finalized.

Thank you again for your continued interest in commercial leased access on Cox's Las Vegas cable system. If StogMedia wishes to commence carriage on the Las Vegas system, kindly provide the reasonable information Cox has repeatedly requested to ascertain the risks of carrying StogMedia's programming. Please contact us if you have any questions or wish to discuss a potential Leased Access Agreement further.

**From:** Charlie Stogner [<mailto:stogtv@gmail.com>]  
**Sent:** Monday, June 5, 2017 6:27 PM  
**To:** Leased Access Response <[LeasedAccessResponse@cox.com](mailto:LeasedAccessResponse@cox.com)>  
**Subject:** StogMedia Las Vega Leased Access request

Since Cos is so adamant about knowing the 'nature' of the programming as a gesture of 'goof faith, we're providing the following about the show we'll air.

It's an 'infomercial' type show entitled "The Heart Attack Grill Diet" which urges viewers to adopt our high fat meat based diet. The infomercial is comprised of testimonials from various people and a few celebrities. It is humorous in nature.

There is no violence, profanity, or sexuality.

The producer and our local affiliate for the site is Dr. Jon, proprietor, Heart Attack Grill, Freemont Street, Las Vegas.

Now can we execute a formal leased access agreement for StogMedia on Cox' Las Vegas system?

Charlie Stogner  
StogTv

**From:** Leased Access Response  
**Sent:** Tuesday, June 6, 2017 4:08 PM  
**To:** Charlie Stogner <stogtv@gmail.com>  
**Cc:** Leased Access Response <LeasedAccessResponse@cox.com>  
**Subject:** RE: StogMedia Las Vega Leased Access request

Thank you for your multiple messages on Sunday, June 4; Monday, June 5; and Tuesday, June 6.

Cox appreciates that in your message this morning (June 6) you finally have provided information regarding the nature of the programming StogMedia intends to present during its leased access time on Cox's Las Vegas, NV area cable system. Attached to this message is a proposed Leased Access Programming Agreement between Cox Communications Las Vegas, Inc. d/b/a Cox and StogMedia (the "Agreement"). Cox observes that StogMedia has yet to provide other information required under the Agreement, but we believe those items can be addressed directly in the terms and conditions of the Agreement.

Regarding the assertion in your June 5, 9:14 a.m. message that you cannot find in your files the information Cox previously provided under Section 76.970(i)(1) of the FCC's rules, attached to this message is Cox's April 6, 2017 message to you, with attachments. As you can see, all the information you claim you have been unable to find in your files was provided to you at least one month ago, including but not limited to the sample leased access programming agreement that Cox was under no obligation to provide at that point.

If you agree with the terms and conditions of the attached Proposed StogMedia-Cox Leased Access Agreement, please execute the Agreement and provide the required insurance certificate, security deposit, first month's payment and other information or payments, if any, required under the Agreement.

**EXHIBIT 3**

CORRESPONDENCE REGARDING LEASED ACCESS PROGRAMMING AGREEMENT BETWEEN COX AND  
STOGMEDIA

**From:** Charlie Stogner [mailto:stogtv@gmail.com]  
**Sent:** Thursday, June 8, 2017 5:05 PM  
**To:** Leased Access Response <LeasedAccessResponse@cox.com>  
**Subject:** Re Las Vegas leased access

As noted you say there are yet some items you can be addressed directly in the terms and conditions of the Agreement.

You write, *If you agree with the terms and conditions of the attached Proposed StogMedia-Cox Leased Access Agreement, please execute the Agreement and provide the required insurance certificate, security deposit, first month's payment and other information or payments, if any, required under the Agreement*, yet I see areas in the document that need attention.

Please see my attachment, 'notes to Cox...' and see if the agreement can't be revised according to the comments.

Hopefully we can agree on the revisions.

Charlie Stogner  
StogTv

Notes to Cox June 6 edition of agreement

Many of the 'conditions' or 'term's in this document appear much more like an 'adhesion contract' than what the law and/or FCC rules say apply.

*Item 3; (a) **CONTROL OVER PROGRAMMING AND CHANNEL.** LESSEE must remain in full control over the Programming and the Channel and may not sublease or delegate control, directly or indirectly, in whole or in part, over the Channel during the Leased Time to any third party.* Cox needs to clarify exactly what this means. StogMedia is a Mississippi based leased access programmer that uses leased access airtime at remote sites throughout the U.S. and has for over 20 years done so by authorizing local 'affiliates' to act on behalf of StogMedia at a particular site. These affiliates are authorized to produce and/or acquire programming, set schedules with the local cable system based on availability and prepay all airtime or other charges at the local level. They 'manage' the local operation.

If this means StogMedia cannot have a local affiliate manage the site, it appears here Cox is going beyond any attempt at 'editorial' control and dictating how a LAPer (leased access programmer) must operate their business.

*Item 6: (a) **Insurance...** this appears to have Cox dictating insurance requirements that exceed what FCC says a cable site can require. "Errors and Omissions" insurance is not the same coverage as "Media Perils" (sometimes referred to as 'Broadcaster's Liability'.*

*FCC agreed on the media perils coverage. The agency has ruled that other insurance requirements were not supported in that they were considered as part of 'doing business'. There are several references where FCC has ruled allowing a cable operator to require 'media perils' is permitted as was the ruling in this petition where Time Warner states further that media perils liability insurance, also known as broadcasters' liability/errors and omission insurance, protects cable systems from the content of programming including advertising, copyright infringement and trademark claims, obscenity allegations and other content-based claims, whether such claims are meritorious or not.*

There are several references where FCC has ruled allowing a cable operator to require 'media perils' is permitted but FCC has agreed on only permitting operators to require media perils coverage. The agency has ruled that other insurance requirements were not supported in that they were considered as part of 'doing business'.

StogMedia provides the operator with a copy of the ACORD form as we provide all cable operators where we exercise the right to carriage of shows under leased access. We've been providing this to a wide variety of cable companies now for over 20 years and not once has one NOT accepted it, nor do we find any evidence where a cable operator has ever had to involve a leased access 'lessee' insurance policy.

**Item 8: Obligations..** We fail to find any evidence FCC permits a cable operator from requiring a leased access programmer to provide the information you demand here, especially in light the very law and FCC rules have the operator 'held harmless' from the LAPer's content. To support this demand, please provide evidence where it has been an issue.

Item 9: **Indemnity**...see comments for item 8.

Item 12: **Record Maintenance**... As justification for this, please provide evidence where FCC has said a cable operator can require such.

Item 13: ...see comments for item 12.

Item 16: Due to the harsh conditions place in (c) and (d), to protect the Lessee we need to have Schedule in **Exhibit B** placed in three (3) month increments **fully prepaid** with the rights to extend another three months with a 30 day notice for a new schedule for an additional three (3) months.

Exhibit C: Rates....Item 4, Security Deposit. With us placing three month orders, prepaid that should be NO security deposit.. *Actually in over 20 years of airing via leased access StogMedia has never been required to put up any security deposit and this has included with such cable operators as Comcast, Time Warner, Charter, MedaOne, Suddenlink, Bright House, Cable One and some independent operators.*

Item 20, Need to strike the wording *This lease of cable channel capacity is granted to LESSEE solely for the purpose of cablecasting the Programming described in Exhibit A*

We find FCC has said, "We also prohibit cable operators from setting terms and conditions for leased access us based on content except to the limited extent it is necessary for an operator to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.

For these reasons I believe Cox needs to eliminate restricting program to any other than that containing lewd or obscene content.

How about looking these comments over and seeing where we can edit the leased access agreement with it actually being an 'agreement' rather than an 'adhesion contract'?

In review, we need to revise this to have the agreement in effect for one year but the actual initial airtime order being only for three (3) months with the right to renew. 3 (a) to be more in line with what FCC has established as acceptable content.

Hopefully Cox can edit and revise this by the end of this week.



**From:** Leased Access Response  
**Sent:** Friday, June 16, 2017 7:17 AM  
**To:** Charlie Stogner <[stogtv@gmail.com](mailto:stogtv@gmail.com)>  
**Cc:** Leased Access Response <[LeasedAccessResponse@cox.com](mailto:LeasedAccessResponse@cox.com)>  
**Subject:** RE: Re Las Vegas leased access

Thank you for your June 8 message and its attached "notes" document regarding the proposed Leased Access Programming Agreement between Cox Communications Las Vegas, Inc. d/b/a Cox and StogMedia (the "Agreement"), which Cox sent to you on Tuesday, June 6.

Cox has been offering leased channel capacity for commercial use on its cable television systems throughout the country consistent with Section 612 of the Communications Act, 47 U.S.C. § 532, and associated FCC rules, 47 C.F.R. §§ 76.701, 76.970, and 76.971, for almost thirty-three (33) years. During that time, every programmer that has leased channel capacity from Cox has, without objection, entered into a Leased Access Programming Agreement substantially similar to the one Cox recently provided to StogMedia. Cox is confident that its proposed Agreement with StogMedia is objectively reasonable and that it complies fully with both the letter and spirit of the FCC's leased access rules, orders, policies, and precedents. Indeed, Cox's experience with the vast majority of its leased access programmers confirms as much.

Nevertheless, to the extent StogMedia wishes to further negotiate the terms and conditions of the proposed Leased Access Programming Agreement, as your June 9 message apparently indicates, Cox will of course consider any reasonable counter-proposal StogMedia may wish to offer. As you surely know from your many years of experience in the television industry, the universally accepted method of undertaking such negotiations is to provide a revision of the proposed Agreement reflecting the specific language and other suggested modifications to which StogMedia will agree. Cox cannot determine from the "notes" document attached to your June 9 message what exactly StogMedia is proposing. Therefore, if StogMedia wishes to counter-propose any changes to the Agreement, please provide to Cox a proposed revised Agreement at your convenience. If StogMedia believes any specific term or condition included in, or excluded from, the proposed Agreement is prohibited, or conversely required, by any FCC rule, order, policy, or precedent, kindly provide either the supporting document or the citation for it, and Cox will gladly review it. However, inasmuch as Cox designed the proposed Agreement pursuant to those rules, orders, policies, and precedents, Cox firmly believes it complies fully with them all.

**From:** [Leased Access Response](#)  
**To:** [Charlie Stogner](#)  
**Cc:** [Leased Access Response](#)  
**Subject:** RE: Timing is crucial  
**Date:** Tuesday, June 20, 2017 7:23:10 AM

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Thank you for your June 16 counter-offer to enter into the proposed Leased Access Programming Agreement between Cox Communications Las Vegas, Inc. d/b/a Cox and StogMedia (the "Agreement") for a term of three (3) months rather than the one year Cox offered. Cox respectfully declines your counter-offer.

As you know, StogMedia specifically requested an Agreement with a one-year term for daily carriage of video programming during the one-hour period from 1:00 a.m. to 2:00 a.m. Cox therefore offered you a form of its standard leased access programming agreement, which included among other things the one-year term and program schedule you requested. The proposed agreement Cox offered was substantially similar to the sample agreement Cox provided to StogMedia on April 6, 2017, which also included a one-year term and which all other programmers who lease channel capacity on Cox cable television systems essentially have signed.

Cox program carriage agreements with non-leased access programmers, including with both broadcast television stations and satellite-delivered cable programming services, generally include a standard three- (3) year term. However, inasmuch as most leased access programmers are unwilling or unable to make such a commitment, Cox has accommodated them by providing a shorter, one-year term for leased access carriage agreements. In fact, all of the agreements under which unaffiliated programmers lease channel capacity on Cox cable television systems have always been for a term of one year.

Given the scheduling logistics associated with the overwhelming prevalence of cable programming agreements covering one year and longer terms, Cox has not offered terms of less than one year for leased access programming. A one-year term is objectively reasonable and is the minimum term that Cox generally can offer as a practical matter.

**From:** Charlie Stogner [mailto:stogtv@gmail.com]  
**Sent:** Tuesday, June 20, 2017 3:06 PM  
**To:** Leased Access Response <LeasedAccessResponse@cox.com>  
**Subject:** Re: Timing is crucial

*My comments and response is in black-face and/or italic.*

*Do I understand correctly Cox 'declining' to provide us a three month schedule for programming at Las Vegas is the same as 'denying' carriage? The request for this schedule was not a 'counter offer' to anything but one we request to avoid the amount of deposit Cox was demanding if this were a 12 month schedule.*

Your email said.....Thank you for your June 16 counter-offer to enter into the proposed Leased Access Programming Agreement between Cox Communications Las Vegas, Inc. d/b/a Cox and StogMedia (the "Agreement") for a term of three (3) months rather than the one year Cox offered. Cox respectfully declines your counter-offer. *While we did originally request a leased access agreement for Las Vegas for one year with a tentative schedule, we found your deposit demands to be oppressive and subsequently have changed our request to be for a one-year agreement with a three-month schedule, with the understanding we expect to renew the schedule at expiration. In this request we propose to prepay the entire three month airtime bill, therefore eliminating any deposit requirement.*

As you know, StogMedia specifically requested an Agreement with a one-year term for daily carriage of video programming during the one-hour period from 1:00 a.m. to 2:00 a.m. Cox therefore offered you a form of its standard leased access programming agreement, which included among other things the one-year term and program schedule you requested. The proposed agreement Cox offered was substantially similar to the sample agreement Cox provided to StogMedia on April 6, 2017, which also included a one-year term and which all other programmers who lease channel capacity on Cox cable television systems essentially have signed.

Cox program carriage agreements with non-leased access programmers, including with both broadcast television stations and satellite-delivered cable programming services, generally include a standard three- (3) year term. However, inasmuch as most leased access programmers are unwilling or unable to make such a commitment, Cox has accommodated them by providing a shorter, one-year term for leased access carriage agreements. In fact, all of the agreements under which unaffiliated programmers lease channel capacity on Cox cable television systems

have always been for a term of one year. *It appears from the wording in this paragraph that Cox is under the assumption they, not the law—not FCC, dictate the 'terms and conditions' for leased access as provided System pursuant to Section 612 of the Communications Act of 1934 as amended (the "Act")*

Given the scheduling logistics associated with the overwhelming prevalence of cable programming agreements covering one year and longer terms, Cox has not offered terms of less than one year for leased access programming. A one-year term is objectively reasonable and is the minimum term that Cox generally can offer as a practical matter. *While you say 'practical matter' is why you require the one-year term there are cases where FCC has ruled a local system must provide a schedule for as little as one half-hour show in a month. It's also very doubtful you can find where FCC has indicated one-year agreements are to be provided should they be requested.*

*In that leased access is 'site-specific' involving scheduling at individual sites, somewhat the same as scheduling local 'ad inserts' in network channels, the 'logistics' should not be overwhelming. While Cox says the 'accommodate' leased access airtime requests, it seems this is more a fulfillment of an obligation of a special law.*

*There is a significant difference in the formal leased access agreement whereby the cable operator and leased access programmer agree both will follow the law and rules governing carriage and the actual airtime orders. We find nothing in the law or FCC rules governing a minimum schedule while there is evidence the Commission has ruled*

*This is an urgent need for some oral communication to discuss this matter.*

*In doing a more careful review of Cox' proposed agreement, something that appears to be more of an adhesion contract than any 'agreement', one of the first things noted in the opening paragraph says it is for cablecasting a specific video program, described in Exhibit A, something that does not fit in the FCC category for leased access.*

*However in item 1, it refers to allowing other Exhibits, While we provided you the name and description of the show we plan to air in our attempt to humor you, it needs to be pointed out that nowhere in FCC's rules does it say individual shows must be so identified. In fact normally*

*our leased access programming falls into FCC's category 3, "other". There are instances where FCC has described this as the type television usually equated with local broadcast stations.*

*A sane and sensible approach to handling leased access would have the formal agreements in effect much like an annual Second Class Mail permit, being a document that proves the LAPeer (leased access programmer) understands that although the cable operator is 'held harmless' from the content of their shows, the LAPer is nevertheless responsible for it. The agreement, should the cable operator require it, provides evidence the LAPer carries "Media Perils" insurance, the only type policy FCC permits operators to require. This should serve to prove the LAPer is qualified to then place airtime orders assuming the requested time slots are available.*

*While Cox permits a lessee to terminate with 30 days notice the requirement to pay in full all amounts that would have become payable during the remainder of the schedule appears to be more 'punitive' than 'good business'. **Our present request for a three month schedule we propose to prepay in full makes this a 'moot' issue.***

*As did Cox founder, James M. Cox, I too came from the farm to newspapering and I don't believe he in any way would be pleased with the manner in which today's Cox Cable tries so hard to make it difficult for programmers to exercise the right to leased access, more specifically in trying to evade the letter of the law and certainly not in any way trying to follow the 'spirit of the law', not in the manner Congress prescribed.*

***By the way, is it not possible for Cox to at least be considerate enough to share with me the individual I am communicating with?***

*Charlie Stogner*

**From:** [Leased Access Response](#)  
**To:** [Charlie Stogner](#)  
**Cc:** [Leased Access Response](#)  
**Subject:** RE: Timing is crucial  
**Date:** Thursday, June 22, 2017 2:10:18 PM  
**Attachments:** [StogTV Leased Access Agreement \(6-21-17\).pdf](#)

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Cox received your June 20 message regarding the proposed Leased Access Programming Agreement between Cox Communications Las Vegas, Inc. d/b/a Cox and StogMedia (the "Agreement"). To answer your question: no, Cox obviously is not denying carriage; StogMedia simply refuses to take "yes" for an answer.

As you know, Cox offered the proposed Agreement to StogMedia on June 6, 2017 based on StogMedia's incomplete Leased Access Application, which specifically requested an Agreement with a one-year term for daily carriage of video programming during the one-hour period from 1:00 a.m. to 2:00 a.m. In a June 8 message, StogMedia rejected Cox's offer, which had included exactly the term and carriage schedule StogMedia had previously requested. Despite its best efforts, Cox could not understand from your June 8 message precisely what StogMedia's objections to the proposed Agreement were, and therefore on June 16 invited StogMedia to propose a revised Agreement reflecting the specific language and other suggested modifications to which StogMedia would agree. StogMedia rejected that invitation the same day in an email message, but instead proposed to change the term of the Agreement to three months. Cox declined StogMedia's counter-offer on June 19.

Today, having reviewed StogMedia's June 20 message, Cox again cannot understand precisely the terms and conditions StogMedia is now proposing or those to which it objects. Nevertheless, based on Cox's good-faith effort to make sense of StogMedia's message, Cox believes StogMedia objects to providing a deposit because it is "oppressive" and now objects to the one-year term StogMedia itself requested because the FCC has established a minimum part-time leased access schedule increment of one-half hour. Cox similarly does not completely understand StogMedia's statement that it has "changed our request to be for a one-year agreement with a three-month schedule." Based on StogMedia's related statement that it now "propose[s] to prepay the entire three month airtime bill," however, Cox believes StogMedia is now proposing a one-year term Agreement with quarterly payments made in advance.

If that is StogMedia's counter-proposal, Cox accepts it, and contingent on StogMedia's apparent agreement to prepay the annual lease quarterly in advance Cox in this case will agree to waive the security deposit requirement initially subject to it being re-imposed at Cox's discretion if StogMedia fails to make any payment when due.

StogMedia's position regarding the security deposit is misplaced because, among other things, Section 76.971(d) of the FCC's rules, 47 C.F.R. § 76.971(d), states explicitly that "[c]able operators may require reasonable security deposits or other assurances from users who are unable to prepay in full for access to leased commercial channels." The FCC, moreover, has repeatedly upheld as reasonable security deposits for as much as fifty percent of a leased access agreement's value, which is far greater than the security deposit Cox initially requested from StogMedia. *See e.g. United Multimedia Productions, Inc. v. CSC Acquisition-New York, Inc.*, 16 FCC Rcd 5234, 5238 (Cab. Serv. Bur. 2001); *Lorilei Communications, Inc. v. Cablevision of Monmouth*, 13 FCC Rcd 13919, 13924 (Cab. Serv. Bur. 1998). In this case, the standard security deposit Cox initially requested is reasonable and is more than justified because as you know StogMedia, among other things, has refused to provide any evidence of its financial qualifications to Cox.

In addition, StogMedia's new position, as we understand it, is that the one-year term StogMedia specifically requested in writing is inconsistent with FCC rules requiring a minimum half hour scheduling increment. This also is plainly erroneous. Cable operators are required to accommodate part-time lease schedules in as small as half-hour increments, and must "accommodate any request for part-time leased access for at least eight contiguous hours, for the same time period every day, for at least a year." *See* 47 C.F.R. § 76.971(a)(4). Scheduling increments, however, are unrelated to contract length, and the FCC specifically declined to establish a minimum leased access contract length that cable operators must offer. *Second Leased Access Report and Order*, 12 FCC Rcd 5267, 5321-23 (1997). Cox observes that leased access producers argued minimum contract lengths of one year or five years were necessary to justify "other business expenses" and the "need to obtain financing or to make long-term investments in leases and equipment." *Id.*, at 5321-22, paras. 108 and 110. The FCC declined to impose a minimum one-year or five-year contract length as the leased access producers requested, but stated its concern that "operators not unreasonably *limit* the length of a contract with a leased access programmer." *Id.*, at 5323 para. 111 (emphasis added); *see* 47 C.F.R. § 76.971(g).

Cox obviously is not in any way attempting to limit the length of the proposed Agreement, and would gladly accept a longer term Agreement consistent with its other non-leased access programming agreements. Moreover, nothing in the FCC rules, policies, or adjudicatory decisions of which Cox is aware requires it to offer StogMedia a leased access contract term of less than one year. A one-year term is undeniably reasonable, and is common in a wide variety of commercial contexts. This is confirmed in this specific context both by StogMedia's written request for a one-year term and by the typical contract lengths of Cox's agreements with leased access and non-leased access programming services on its cable systems throughout the country.

In any case, based on StogMedia's apparent proposal to enter into a one-year agreement with quarterly advance payments, attached is a revised Agreement incorporating those terms and waiving, initially at least, the security deposit requirement. If StogMedia agrees with the terms and conditions of the attached proposed StogMedia-Cox Leased Access Agreement, please execute the Agreement and provide the required insurance certificate, first quarter payment and other information — such as music information (Exhibit D) and method of programming delivery (Exhibit C.3) — or payments, if any, required under the Agreement.

On the other hand, if StogMedia wishes to counter-propose any changes to the Agreement, provide a proposed revised Agreement reflecting the precise terms and conditions, and associated contractual language, to which StogMedia will agree. If StogMedia believes any specific term or condition included in, or excluded from, the proposed Agreement is prohibited, or conversely required, by any FCC rule, order, policy, or precedent, provide either the supporting document or the citation for it, and Cox will gladly review it. If Cox must continue to speculate regarding StogMedia's proposals based on its ambiguous electronic messages, however, that can only delay the completion of a mutually acceptable Agreement.

**From:** Charlie Stogner [mailto:stogtv@gmail.com]  
**Sent:** Monday, June 26, 2017 7:53 AM  
**To:** Leased Access Response <LeasedAccessResponse@cox.com>  
**Subject:** Las Vegas agreement

We accept your latest agreement with the start date of July 21. However we note we made a serious error in the schedule and we show this on Exhibit B, changing to 3-4pm daily. Based on rates in Exhibit F, we're prepared to pay the initial first quarter in full as soon as we can receive an invoice.

Billing needs to be sent to:

Heart Attack Grill

450 Fremont Street #130

Las Vegas, NV 89101

Can be sent electronically to [jon@heartattackgrill.com](mailto:jon@heartattackgrill.com) with copy to [stogtv@gmail.com](mailto:stogtv@gmail.com)

We're prepared to sign the agreement once revised to the new schedule and will do so and return as soon as we receive the revised copy.

This is based on your comment in your latest email which reads:

*"In any case, based on StogMedia's apparent proposal to enter into a one-year agreement with quarterly advance payments, attached is a revised Agreement incorporating those terms and waiving, initially at least, the security deposit requirement. If StogMedia agrees with the terms and conditions of the attached proposed StogMedia-Cox Leased Access Agreement, please execute the Agreement and provide the required insurance certificate, first quarter payment and other information — such as music information (Exhibit D) and method of programming delivery (Exhibit C.3) — or payments, if any, required under the Agreement."*

Exhibit B...needs to be corrected  
to:

Programming:

2017 Time: 93:00 p.m. —4:00 p.m.

cablecasts:

s): Daily (Monday — Sunday) Time(s) 3:00 p.m. — 4:00 p.m.

Initial cablecast of

Date: July 21,

Subsequent

Day(



We realize this changes the billing to

3 to 4pm daily @ \$108.27 per hour..... 30 day months, \$3,248.10; 31 days, \$3,356.37; quarterly \$9,842.57.

The only music will be 'royalty free'; delivery will be by your method of receiving leased access at Las Vegas and payment will be sent as soon as we receive an invoice for the first quarter.

I've attached a copy of our affiliate authorization informing Cox of Jon Basso as our official affiliate fully authorized to act on our behalf involving Las Vegas programming, including making direct payments.

Please advise if this is satisfactory and if so please invoice us ASAP.

--

Charlie Stogner  
StogTv

**From:** Leased Access Response [mailto:LeasedAccessResponse@cox.com]

**Sent:** Wednesday, June 28, 2017 12:32 PM

**To:** Charlie Stogner <stogtv@gmail.com>

**Cc:** Leased Access Response <LeasedAccessResponse@cox.com>

**Subject:** RE: Las Vegas agreement

Cox received your June 26 message regarding the proposed Leased Access Programming Agreement between Cox Communications Las Vegas, Inc. d/b/a Cox and StogMedia (the "Agreement"), and the purported "Affiliate affidavit for Dr. Jon." We understand StogMedia has accepted the terms and conditions of the Agreement Cox offered on June 22, 2017 with a proposed change in the programming schedule to daily at 3:00 – 4:00 p.m. Cox agrees to that proposed change, has revised the Agreement to reflect StogMedia's revised programming schedule (and associated rates), and will be happy to commence carriage of StogMedia's programming pursuant to the Agreement.

Regarding the purported "Affiliate affidavit for Dr. Jon," Cox observes that the "Affidavit" StogMedia provided is irrelevant to Cox's Las Vegas, Nevada cable television system because it only authorizes Mr. Basso as StogMedia's agent in connection with Comcast's Florence, Alabama system. The ineffective "Affidavit" notwithstanding, StogMedia is free to appoint an agent to act on its behalf, of course, but this appointment in no way relieves StogMedia of its obligations under the Agreement, including among other things, its payment obligations. Cox also notes that the appointment of an agent in no way effects an assignment of the Agreement, which is prohibited under Section 19. StogMedia therefore remains responsible for its obligations under the Agreement and for all the acts or failures to act by its agent or agents.

An Execution Copy of the Agreement and an Invoice are attached. Please be aware of the following:

1. The hourly lease rate is \$129.34 for the 3:00 – 4:00 p.m. programming schedule on Channel 48 of the TV Starter Tier (*see* Exhibit B), and the annual lease rate for one year (365 days) of daily carriage is \$47,209.10 (*see* Exhibit F).
2. Payments are due in quarterly installments of \$11,802.28 and must be paid one month in advance (*see* Exhibit C.2). Carriage, therefore, will commence one month after the date on which Cox receives the first quarterly payment; *e.g.*, if Cox receives that payment tomorrow, June 29, carriage will begin on Friday, July 29 (*see* Section 2). StogMedia is responsible for making timely quarterly payments under the Agreement and Cox will not send additional invoices or payment reminders.
3. Submission of Exhibit D specifying the Title, Composer, Performing Artist, Publisher, and Duration of the music in the programming is required upon submission of the programming to Cox, StogMedia's stated belief that the music is "royalty free" notwithstanding. Failure to timely provide this information may result in suspension of any cablecast of the Programming or termination of the Agreement (*see* Section 8).
4. StogMedia must provide a Certificate of Insurance consistent with the terms and conditions of the Agreement prior to execution (*see* Section 6). StogMedia may provide

such Certificate of Insurance in conjunction with its signed Agreement, but until Cox receives it, Cox will not execute the Agreement and carriage of StogMedia's Programming will not begin.

5. To ensure that StogMedia's Programming is carried without technical impediments, please specify which of the acceptable specified file formats StogMedia will use to deliver its Programming or whether StogMedia plans to deliver its Programming in the form of a physical DVD-R or DVD-RW (*see* Exhibit C.3).

Thank you for leasing channel capacity on Cox's Las Vegas, Nevada cable television system. Please execute the Agreement and provide the required insurance certificate, first quarter payment and other information noted above.

**From:** Charlie Stogner [mailto:stogtv@gmail.com]  
**Sent:** Thursday, June 29, 2017 1:35 PM  
**To:** Leased Access Response <LeasedAccessResponse@cox.com>  
**Subject:** Signed agreement

Sorry about the 'copy and paste' error, leaving the Alabama info. I'm attaching a corrected affidavit for Dr. Jon.

Understand the different rate, different tier. The check is being issued by Dr. Jon today and sent being mailed as per invoice to: Cox Media, P.O. Box 50464, Los Angeles, Ca 90074

The show is still being edited and the info on your Exhibit D will be submitted as per instructions with the programming or before.

Who will be our contact, name, email, phone when submitting content?

Attached is the insurance ACORD form. The signed agreement and correct affiliate info.

--

Charlie Stogner  
StogTv



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
06/28/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> The Stogner Agency 625 Delaware Avenue Mccomb, MS 39648 Phone: (601) 684-4467 Fax: (601) 684-4449	<b>CONTACT</b> Russ Stogner <b>NAME:</b> <b>PHONE:</b> (601) 684-4467 <b>(A/C, No, Ext):</b> <b>E-MAIL:</b> <b>ADDRESS:</b> <b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> AXIS INSURANCE COMPANY <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	<b>FAX:</b> (601) 684-4449 <b>(A/C, No):</b> <b>NAIC #</b>
<b>INSURED</b> StogMedia CHARLES STOGNER DBA 5146 Beauregard Rd. WESSON MS 39191-		

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			MCN000108521701	04/16/2017	04/16/2018	EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ MEDIA PERILS \$ 1,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

COX COMMUNICATIONS LAS VEGAS INC  
1700 VEGAS DR  
LAS VEGAS, NV 89106

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Russell L. Stogner*

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